January 29, 1997 LCI International Telecom Corp.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Access Charge Reform	)	CC Docket No. 96-262

COMMENTS OF LCI INTERNATIONAL TELECOM CORP.

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TABLE OF CONTENTS

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LCI International Telecom Corp. ("LCI"), by its attorneys, hereby submits its initial comments on the Commission's notice of proposed rulemaking recently issued in this proceeding,[1] and states as follows:

SUMMARY OVERVIEW

In its Notice, the Commission seeks comments on reforms to its previous access charge rules, in light of the changes envisaged by the Telecommunications Act of 1996, and the Commission's August 8, 1996 Section 251 Implementing Order. The Commission proposes three possible approaches, a "market-based" approach, a "prescriptive" approach, or some combination of the two. For the reasons set forth below, LCI believes that market-based access charge reform can occur only after a true functioning competitive local market has developed.

[1] Access Charge Reform, *et al* (*Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry*), FCC 96-488, released December 24, 1996 ("Notice").

As the Commission recognizes, only if competitors can undercut unduly high access charges will market forces act to bring them down. In today's environment, no competitive market for local services exists, and, accordingly, no competitor can hope to avoid access charges except on the most limited basis; the incumbent LEC's remain the ubiquitous network through which the vast majority of telephone service consumers must be reached. As LCI sets forth below, resold ILEC local services will not support competition, since, by definition, such services are priced to competitors at wholesale cost, which leaves no room for the profit necessary to move to facilities-based competitive switches and network. Nor is the crucial intermediate step between simple resale and full facilities-based competition available today. As LCI explains below, although the Act and the Commission's August 8, 1996 Order lay the legal groundwork for IXC and other competitors' rights to purchase unbundled combined network elements at cost-based prices, no ILEC today has in place the systems and processes to seamlessly and instaneously provision unbundled combined network elements in large numbers. Indeed, order entry and provisioning even for simple resale is in its infancy, with different EDI and fax-based systems applied by different ILEC's, often with badly understaffed support for taking simple resale orders. Until the essential middle ground is provided by the incumbent LEC's--seamless, efficient, instaneous order entry and provisioning of unbundled network elements at cost-based prices to any IXC or other competitor which orders it--there simply is no "market" for local telephone services upon which to base a "market-based" approach to access reform.

To speed the development of such a market and allow market-based access charge reform as rapidly as possible, LCI respectfully suggests that the Commission reiterate in its Access Reform Order the centrality of ILEC provisioning systems for unbundled combined network elements prior to ruling on RBOC Section 271 long distance entry applications. If the Commission makes such systems a pre-requisite for long distance entry, the RBOC's will have been given the appropriate incentives to complete the still-underway software programming and systems work necessary to enable competitors to provision unbundled combined network elements at cost-based prices. It is a sad lesson of history--shown most recently by the litigation strategy of GTE Corporation after being allowed into long distance--that once the prize of long distance entry is gained, litigation to attempt to enforce writing such programs and developing such systems will be the inevitable and unhappy result.

Until a true market exists for local telephone services, LCI believes the only pro-competitive choice open to the Commission is to retain its long-standing "prescriptive" approach to access charges the Commission. In this regard, LCI believes the Commission should use a TSLRIC or TELRIC approach. In no event, because competition for terminating access can never develop, does LCI believe a market-based approach can be used for terminating access.

LCI applauds the Commission's historic role in creating a truly competitive telecommunications marketplace, and urges the Commission to re-inforce the unbundling requirements of Section 251(c)(3) and Section 271(B)(ii) of the Act in its Access Reform Order, to create a truly competitive local telephone service market, and allow market-based access reform to work.

INTRODUCTION

LCI is one of the nation's leading -- and most rapidly growing -- interexchange carriers. LCI is committed to providing its customers with a full complement of services, including local exchange services and exchange access services, through a combination of resale, purchase of unbundled combined network elements at cost-based prices from incumbent local exchange carriers ("ILECs")[2]and, ultimately, construction of its own network facilities. Thus, LCI's interests in this proceeding are multi-faceted. As a major provider of interexchange services, it is a consumer of exchange access services, virtually entirely from ILECs. In addition, it is a prospective competitor of the ILECs in the provision of long distance service. LCI commends the Commission for initiating this access reform proceeding. It has been more than thirteen

[2] "We confirm our tentative conclusion in the NPRM that section 251(c)(3) permits interexchange carriers and all other requesting telecommunications carriers, to purchase unbundled elements for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves in order to provide interexchange services to consumers." Para. 356 of the August 8, 1996 *Competition Order* in CC Docket No. 96-98.

years since the Commission's first interstate access charge rules were promulgated.[3] Although there have been some adjustments to those rules and policies during the intervening years through various rulemaking proceedings,[4] and through occasional waivers,[5] the basic access charge structure has remained largely intact during that time.[6]

LCI shares the Commission's concern that disparities between cost causation and cost recovery send distorted pricing signals and are inconsistent with efficient competition. Moreover, under the current access charge rules, ILECs are not only permitted, but mandated, to set access prices at levels which recover far more than the direct costs of providing access service. Access pricing consists of numerous significant subsidies explicitly designed and

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[3]MTS and WATS Market Structure (*Third Report and Order*), 93 FCC2d 241 (1983), *recon.*, 97 FCC2d 682 (1983), *second recon.*, 97 FCC2d 834 1984), *aff'd. sub nom.* National Association of Regulatory Commissioners v. FCC, 737 F.2d 1095 (D.C.Cir. 1984).

[4]See, *e.g.*, Transport Rate Structure and Pricing, 7 FCC Rcd 7006 (1992), *recon.* 8 FCC Rcd. 5370 (1993).

[5]See, *e.g.*, Ameritech Operating Companies Petition for Waiver of Part 69 of the Commission's Rules to Establish Unbundled Rate Elements for SS7 Signalling, 11 FCC Rcd 3839 (Com. Car. Bur. 1996).

[6]As explained in the Notice, that structure has consisted of a variety of usage-based and flat-rated charges imposed by the Commission's rules on regulated access service providers. Some of those charges are assessed by ILECs on interexchange carriers (IXCs) who utilize local exchange facilities to originate and terminate interexchange calls. Other charges (*i.e.*, the End User Common Line Charge) are assessed directly on local exchange service customers. Under the current system, there is not consistency or a relationship between the manner in which costs are incurred by ILECs and the manner in which those costs are recovered. Certain non-traffic sensitive costs are recovered through usage-based charges.

previously prescribed by the Commission to duplicate the subsidization to the Regional Bell Operating Companies which existed prior to divestiture.

The current structure has imposed huge costs on consumers of long distance services during the transition from regulated monopoly to competition in the interexchange market. Total access charges paid to LEC's comprise up to 45% of IXC's gross revenues.[7] In the world as it has been from 1984 to 1997 (in which most ILEC's functioned principally as local service providers), such an explicit and inflated subsidy from one group of companies to another (while costly to consumers) did not create an unfair competitive advantage for one set of market players. In a world in which the ILEC's are also in the long distance market, however--competing directly with the very IXC companies from which this huge subsidy is paid--access charge subsidies, if continued, would constitute a huge windfall from which the incumbent LEC's can cross-subsidize long distance prices, while simultaneously depriving their IXC competitors of badly needed revenue to build out networks and compete against the incumbent LEC's in the local service market. Such a result, obviously, is the polar opposite of that intended by the Telecommunications Act of 1996--a world in which the ILEC's and IXC's compete on a level playing field against each other in all markets. To slant that playing field by the continuation of access charges in a market in which both ILEC's and IXC's offer vertically-integrated services, will badly harm competition both in the long distance and local markets, and

[7] See, e.g., Transport Rate Structure and Pricing, 7 FCC Rcd 7006, 7042 (1992); Transport Rate Structure and Pricing, 19 FCC Rcd 3030, 3045 n.36 (1994).

lead to the recreation of the vertically-integrated monopoly power of the old AT&T, this time in the hands of the ILEC's. Nothing in the Commission's prior orders suggests that it desires a result so fundamentally at odds with the Telecommunications Act of 1996.[8]

With passage of the Act[9], it is not just timely, but imperative, that the Commission revise its rules and policies governing access pricing to be compatible with access service competition, recognizing that during the transition to a competitive access service market, ILECs will continue to exercise considerable monopoly power over the provision of access service.

In the Notice, the Commission has invited comment on several alternative proposals for adjusting the overall regulation of access services, as well as on several specific proposals regarding access rates and rate structures. In these comments, LCI will first address the Commission's proposals for regulation of access services. For reasons which will be explained in these comments, LCI believes that a prescriptive approach, rather than a market-based approach, will remain necessary to ensure that access services are priced at just and reasonable

[8] It is widely acknowledged that the current access charge rules are the result of, among other things, a series of compromises and do not reflect the Commission's views on optimal access pricing. For example, in its initial access charge decision, the Commission determined that virtually all non-traffic sensitive (NTS) costs assigned to the interstate jurisdiction through the jurisdictional separations process should be recovered in flat charges assessed upon end users. See 93 FCC2d 241 (1983). However, on reconsideration, faced with considerable objection to end user charges and with threatened legislative proposals which would have limited such charges, the Commission modified its access charge plan to set limits on end user charges with the balance of those NTS costs to be recovered from IXCs. See 97 FCC2d 682 (1983). In 1987, the Commission increased the maximum allowable end user charges to $3.50 for residential customers, and $6.00 per line for multiline business customers. However, those maximum levels have remained the same for nearly a decade.

[9] Pub. Law No. 104-104, 110 Stat. 56 (hereinafter, the 1996 Act).

rates, pending the eventual development of real and meaningful competition in the provision of access services and local exchange services. LCI then further explains the pre-conditions which are crucial to the development of meaningful competition in the local services market, which will provide the foundation for competition in the local access service market. Only the occurrence of such conditions can render market-based access reform potentially feasible. Finally, LCI will comment on several of the specific rate structure and rate level proposals set forth in the Notice.

I. At the Current Stage of the Transition to a Competitive Local Services Market, a Prescriptive Approach to Access Pricing, Rather Than a Market-Based Approach, Remains Necessary

As the Commission states, an overriding goal of this proceeding, like that of the 1996 Act itself, is to foster competition in the provision of access services which will eventually eliminate the need for price regulation of those services.[10] LCI shares that vision and looks forward to the day when local markets, including access service markets, are subject to effective competition so that market forces -- not regulation -- ensure just and reasonable, non-discriminatory prices to consumers based on forward looking costs of service.

In the Notice, the Commission sets forth two alternative approaches for access pricing reform -- a "market-based" approach and a "prescriptive" approach.[11] Under the "market-

[10] Notice, *supra*, at ¶ 140.

[11] Current access charges are, of course, the result of precisely such "prescriptive" regulation imposed by the Commission many years ago. Having earlier prescribed these charges, it surely is reasonable for the Commission now to allow a reasonable time while the industry make an historic and complex shift to local services competition.

based" approach, ILECs would be afforded flexibility to allow access prices to move to competitive levels in successive stages as the access service market became subject to competition. The "prescriptive" approach is based upon the premise that market forces may not be sufficient to move access prices to competitive levels and that ILECs would be required to move their access prices to cost-based levels based on regulatory requirements.

In considering whether to adopt either the market-based approach or the prescriptive approach -- or some combination of each -- the Commission must carefully examine and evaluate the degree to which local telephone markets are subject to competition, as well as the Commission's own role in the process. The FCC's policies intended to implement Section 251 of the Telecommunications Act of 1996 are among the most important in the history of telecommunications law. The Commission recognized the explicit imperative of Section 251(c)(3) of the Act, that incumbent LEC's unbundle their networks and provide those unbundled elements at cost-based prices to be combined by competitors as the competitors see fit.[12] The Commission's August 8, 1996 Order in this regard is crucial to establishing real competition in the local services market. Thus, the Commission has put in place the policies

[12] "We...conclude that the quoted text [of Section 251(c)(3)] requires incumbent LECs, if necessary, to perform the functions necessary to combine requested elements in any technically feasible manner either with other elements from the incumbent's network, or with elements possessed by new entrants." Para. 293 of the August 8, 1996 *Competition Order* in CC Docket No. 96-98. A similar quote is in paragraph 294: "[W]e conclude that section 251(c)(3) should be read to require incumbent LECs to combine elements requested by carriers." Also in paragraph 295: "Under our method, incumbents must provide, as a single, combined element, facilities that could comprise more than one element."

necessary to open the local market to competition--but a concerted, extended effort will be necessary to implement these policies, so that real and meaningful competition develops in the local services market.

Although it has been nearly one year since the 1996 Act became law, it is a fact that implementation of the 1996 Act remains in its embryonic stages, due in no small part to the various lawsuits filed by GTE and the RBOCs challenging and delaying implementation. Thus, at this time, the status of the Commission's local competition and pricing rules is uncertain pending completion of the Eighth Circuit appeal process.[13] Similarly, while many interconnection agreements and state-approved arbitration decisions have been announced, few, if any, such agreements have been implemented, and almost all state PUC pricing is in the form of interim, not final, orders. In addition, several ILECs are seeking judicial review of many of the state arbitration decisions which affect them.[14] Accordingly, today, the ILECs continue to have monopoly power in local services, including access services, throughout their operating territories. How quickly these circumstances will change, and how soon local competitive entry can begin in any meaningful manner, remains as speculative today as it was prior to passage of the 1996 Act.

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[13]Iowa Utility Board, *et al* v. FCC, No. 96-3321 and consolidated cases, appeals pending.

[14]To mention just a few of the better known examples, GTE Corporation has appealed state arbitration decisions in approximately twelve states to date; SBC Corporation appealed the Texas PUC's order on pricing for unbundled network elements just days ago.

What is not subject to speculation is the Commission's crucial role during the transition to competition. In a very real sense, the Commission's primary role is that of a transition manager. It will be the Commission's responsibility to establish and enforce many of the detailed requirements necessary to enable local competition to become a reality. These responsibilities include continued regulatory oversight of those interstate services, including access services, offered by the ILECs as to which they retain market power.

The principal goal of the Commission in this proceeding, as in all others under the Telecommunications Act of 1996, must be to open the incumbent LEC's local network to support multiple network vendors.[15] The current ILEC network is simply so vast that no entrant, much less the multiple entrants needed for vibrant competition, will be able to duplicate it any time soon. The truth of this statement is explicitly recognized in the network unbundling provision of the 1996 Act and in the Commission's August 6, 1996 Order. But much, much more needs to happen before local telephone competition is a reality, not mere words on paper.

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[15] S. Rep. No 23, 104th Cong., 1st Sess. 5 (1995); H.R. Rep. No. 204, 104th Cong., 1st Sess. 48 (1995).

See also the FCC's comment in paragraph 3 of the *Competition Order*: "Three principal goals established by the telephony provisions of the 1996 Act are: (1) opening the local exchange and exchange access markets to competitive entry; (2) promoting increased competition in telecommunications markets that are already open to competition, including the long distance service market; and (3) reforming our system of universal service so that universal service is preserved and advanced as the local exchange and exchange access markets move from monopoly to competition."

Until that reality exists, there is no functioning, competitive market for local telephone service, and any "market-based" access charge reform is simply a fiction.

Resale Cannot Sustain Effective Local Competition

It is important to understand that cost-based competition cannot be established by service resale. While market entry by resale is a competitor's first wedge into the ILEC's huge embedded base of monopoly customers, service resale, at prices approximately twenty percent (20%) below retail cost, provides no margin for profit, and at best is a break-even strategy. No competitor can put in place switches or other elements of its own network through profits from resale--because there simply are none. Nor can the entrant drive prices for consumers to economic cost based on resale entry, because the competitor's price necessarily is limited to the wholesale margin, which is based on avoided retail cost. The ILEC in a resale environment also continues to recoup its costs of inefficiency and recent strategic investments. Finally, ILEC provisioning even for simple resale remains in its infancy, with different EDI (Electronic Data Interface) and fax-based systems applied by different ILEC's, often with badly understaffed support for even taking simple resale orders. Resale alone, then, cannot support cost-based pricing. To get to the stage at which real competition can occur, instantly available unbundled network elements combined and provided in large numbers at cost-based prices from every incumbent LEC is crucial.

The theoretical framework for competition based on unbundled network elements exists in the Telecommunications Act of 1996 and in the Commission's prior orders. In the Act, the

Congress required the ILEC's to open their networks by providing unbundled network elements at cost-based prices, which the purchaser could then combine; see Telecommunications Act, at Section 251(c)(3). And in Section 271(b)(ii), item two of the "Competitive Checklist," the Congress required "nondiscriminatory access to unbundled network elements" before an ILEC could be allowed into long distance. The Commission began to put flesh on the bones of these crucial commands in its August 8, 1996 Order, but much remains to be done before cost-based competition based on unbundled network elements can occur.

Minimal Conditions For Effective Local Competition Do Not Yet Exist

The minimal conditions necessary for unbundled network element cost-based competition to flourish include (but are not necessarily limited to) the following.

The local switch is the heart of local competition; this is where services are defined and competition and revenues created. The ILECs must implement a local switching network element which enables the entrant to designate feature/functions on the lines of its subscribers; permits the entrant to use the ILEC interoffice network for the termination of calls in the same manner as the incumbent; and ultimately provides entrants the ability to use different routing tables for its customers than the incumbent. Further, ILEC switches and support systems must be modified to support multiple local providers in the same manner that such switches and systems were modified to reflect multiple long distance carriers a decade ago. These are matters of software programming which are, to the best of LCI's knowledge, far from complete as to any ILEC.

Further, entrants must be able to combine local switching with other basic ingredients (loops and transport) obtained from the ILEC. In the short run the ILEC is the only ubiquitous network. If entrants cannot purchase all the ingredients (network elements) needed to become local carriers, local competition will develop only in narrow areas. In the long run, if local facilitates ownership becomes the necessary predicate to market participation, the industry will become unnecessarily concentrated, with a loss of competitive diversity: only the huge players have the capital to survive and move to the next stage. In either timeframe, short or long, the instantaneous actual (not theoretical) availability of unbundled combined network elements provided at cost-based price must be present, or local competition cannot be sustained.

The short of it is that real competition will begin only when it is as easy to order a new local telephone service provider on an unbundled combined cost-based network element basis--transparent to the customer--as it is today to order a new long distance service provider. Only if the IXC's can provide both exchange and exchange access services to their subscribers on the basis of cost-based, instantly provisioned unbundled network elements at cost-based prices will entrants be in a position to drive inefficiencies and excess profits from access prices. Until that day arrives, a market-based approach to access reform cannot succeed. The Commission should reiterate in its Access Reform Order that market-based access reform can succeed only when a true market in local services has been created. To hasten the arrival of that day--the central goal of the 1996 Act and the Commission's own prior orders--the Commission should set explicit, definite and precise measures of seamless availability of the provisioning of unbundled combined

network elements, at cost-based prices, as an explicit precondition of any ILEC's entry into long distance. Such a precondition is doing no more or less than faithfully implementing the explicit language of Item Two on the "Competitive Checklist" of the 1996 Act, Section 271(B)(ii), which requires the commission to allow a petitioning LEC into long distance only upon providing "nondiscriminatory access to unbundled network" elements.

If the FCC takes this step in its Access Reform Order, and clarifies that it will not allow any ILEC into long distance which has not provided actual, seamless, instantaneous order entry and provisioning of unbundled combined elements at cost-based prices in the tens of thousands of orders daily, a truly competitive local market should begin to develop. Only then can the possibility of "market-based" access reform be considered, for only then will a true market for local telephone services have the potential to exist. If the Commission were to adopt the fiction of a "market-based" approach, before a true competitive market can exist in fact, and simultaneously allow the RBOC's into long distance before the crucial preconditions summarized above occur, it will allow its previously prescribed access charges to remain in full force, collected by the RBOC and other ILEC monopolists, with no hope of competition emerging to lower those prices, and with no way for competitors to avoid them. Were that to happen, the Commission would have handed the RBOC's a $10 billion windfall, straight from the pockets of their competitors, from which they can cross-subsidize their own long distance services, while depriving IXC's of badly-needed revenue to build competitive local services networks. Such a

result would allow the RBOC's to re-create the old AT&T vertically-integrated system, paid for in major part by access charge subsidies collected from their long distance competitors.

Thus, if the choice is between reliance on "market" forces not yet in effect, or continued FCC regulation of ILEC access prices, the public interest is clearly served by the latter. As set forth above, access competition cannot begin to emerge until access prices are moved toward cost, and market forces will not move prices toward cost until there is effective competition. Therefore, a "prescriptive" approach should be embraced by the Commission with the goal of moving access prices to levels based on Total Service Long Run Incremental Costs (TSLRIC).[16] In its Report and Order promulgating regulations to implement the local competition provisions of the 1996 Act,[17] the Commission noted that access charges and unbundled network element rates should converge. For example, it identified transport and termination services as warranting the same rates whether the traffic being transported and terminated is local or long distance (*i.e.*, access service).[18] TSLRIC pricing (or Total Element Long Run Incremental

[16] At para. 716 of the *Competition Order*, the FCC recognized that "[w]e also must move access charges to more cost-based and economically efficient levels." Of course, in the Access Charge NPRM, the FCC proposed to adopt TSLRIC as the governing cost-based standard. At para. 213 of the Access Charge NPRM, the FCC recognized that adopting TSLRIC would require reductions in most if not all switched access rate elements.

[17] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (*First Report and Order*), CC Docket No. 96-98, FCC 96-325, released August 8, 1996 ("Local Competition Order").

[18] *Id.*, at ¶ 1033.

Costs, or TELRIC, for the pricing of unbundled network elements)[19] promote efficiency, assure fairness to competitors, and send correct pricing signals. Therefore, in implementing a prescriptive approach to access pricing reform, the Commission should do so with the goal of moving access prices to TSLRIC-based rates as expeditiously as possible.

In evaluating the market-based and prescriptive approaches to access pricing, it is important to recognize that this will not be the Commission's only opportunity to address those approaches. If a prescriptive approach is established in this proceeding, the choice may be revisited in future years as true local competition, including access competition, emerges. In fact, LCI anticipates that competition for various access services and for access service elements will not develop at the same time. For example, as described in Section II of these comments, competitive pricing pressures will impact originating access service elements before they affect terminating services. A prescriptive approach will enable the Commission to adjust its level of regulation as needed to ensure availability of access service at TSLRIC-based rates.

[19] Although LCI understands that there may be technical differences between TSLRIC and TELRIC, those two methodologies are highly-similar approaches to achieving rates based upon forward-looking long run economic costs and, for the sake of convenience, we shall use the single term TSLRIC throughout these comments.

II. Irrespective of What Approach to Access Pricing Reform is Adopted, the Commission Must Prescribe Reductions in the Rates for Terminating Access Service

In the Notice, the Commission raises a series of questions regarding the special circumstances of terminating access.[20] In LCI's view, those concerns are well-founded. Terminating access differs from originating access in a critical respect which will enable incumbent access service providers to retain market power even after implementation of the local competition provisions of the 1996 Act. Because of these intrinsic differences between originating access and terminating access, it is especially critical that the Commission embrace a prescriptive approach for terminating access to ensure that terminating access is priced based on forward looking, *i.e.*, TSLRIC-based, costs.

With terminating access, unlike originating access, neither the end user purchasing the interexchange service nor the IXC chosen by the end user selects the terminating access provider. Rather, the choice of access service provider is made by the called party; the decision to use the interexchange service (*i.e.*, to place an interexchange call) is made by the calling party. As recognized in the Notice, this absence of a vendor-customer relationship between the service decision maker and the service provider eliminates any incentive for the service provider to price terminating access based upon its perceptions of market demand for the service. Accordingly, regulatory oversight will remain necessary to ensure that terminating access prices

[20] Notice, *supra*, at ¶¶ 271 - 276.

are set based on forward looking economic costs, including imposition of a requirement that such prices be supported by TSLRIC studies.[21] Accordingly, it will be necessary for the Commission to adopt and implement a prescriptive approach for terminating access to achieve that objective.

LCI does not, however, support several of the alternative terminating access proposals offered by the Commission. For example, the Commission seeks comment on a proposal to require called parties to be charged for terminating access.[22] LCI believes that this proposal is not in the best interests of the consuming public and would discourage use of telecommunications services. While both called and calling parties use telephone networks during the course of telephone calls, the decision to utilize those facilities is made exclusively by the calling party.[23] Imposition of terminating access charges on called parties would result in many called parties declining to accept calls. Of equal significance, it would also result in those called parties who do not decline to accept calls being charged for calls they do not want to receive, *e.g.*, calls from telemarketers, wrong numbers, etc. Notwithstanding the limited exception of cellular service in which called parties are charged for network usage, receipt of telephone calls without assessment of charges on the called party has been a fundamental aspect of telephone service for many years,

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[21] *Id.*, at ¶ 274.

[22] *Id.* at ¶ 275.

[23] 800 and 888 services are exceptions to this principle. In the past, the Commission's access charge rules have treated the terminating end of those services as they treat the originating end of outbound services.

and a feature of telephone usage that consumers reasonably have come to expect.[24] The Commission should not require called parties to bear the cost of terminating access as a means of eliminating access pricing distortions.

Nor does LCI support the proposal to eliminate charges for terminating access and to allow recovery of terminating access costs in charges for originating access.[25] Irrespective of the difficulties in establishing prices for terminating access based on forward looking costs, the Commission should recognize that terminating access -- like originating access -- does impose real costs, and those costs (but no more than those costs) should be recovered where they are incurred. LCI does not support non-cost based allocation, just as it does not support recording in excess of cost.[26]

III. Access Costs Currently Allocated to the Carrier Common Line Charge and the NTS Portions of Local Switching Should be Recovered in Per Presubscribed Line Charges Assessed on IXCs

LCI shares the Commission's view that the current practice of requiring ILECs to recover a portion of interstate non-traffic sensitive (NTS) costs -- primarily local loop costs --

[24]LCI notes that even in the cellular area, service providers are beginning to implement "calling party pays" arrangements, or otherwise limiting called party charges for incoming calls (*e.g.*, no charge to the called party for the initial minute of cellular calls received).

[25]Notice, *supra*, at ¶ 276.

[26]One portion of terminating access charges which should not be recovered either from called parties or from calling parties is the Transport Interconnection Charge on terminating traffic. By definition, that charge is not cost-based and should not be imposes at all since there are no TSLRIC-based costs to recover. See Section V of these comments, *infra*.

and NTS local switching costs in usage-based charges on IXCs should be discontinued.[27] The Commission has long acknowledged the illogic of requiring recovery of costs which are, by definition, non-traffic sensitive on a usage sensitive basis. Even at the time that the original access rules were being promulgated, the Commission recognized that usage-based recovery mechanisms for NTS costs were inappropriate.[28]

While LCI anticipates that there will be wide agreement among commenters on the need to eliminate traffic sensitive recovery of interstate NTS costs in the form of usage-based access charges on IXCs, the critical, and more difficult question is, how should those NTS costs be recovered? LCI believes that the most appropriate mechanism for ILEC recovery of those NTS costs is through a flat charge (*i.e.*, a non-usage sensitive charge) assessed on IXCs on a per presubscribed line (a per-PSL) basis.[29] As the Joint Board notes, it would send correct market

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[27]Local switching costs include traffic sensitive as well as NTS components. LCI advocates that the traffic sensitive portions of local switching be recovered in usage-sensitive charges based on TSLRIC. For reasons explained at Section II of these comments, *supra*, immediate establishment of usage-based charges for local switching is especially imperative for local switching at the terminating end.

[28]See, *e.g.*, Access Charge Order, *supra*, 93 FCC2d 241 at ¶ 28 "The costs imposed by the nation's telecommunications system, and ultimately upon the general public, by our present usage sensitive method of recovering these NTS costs pose a substantial danger to the long term viability of our nation's telephone systems."

[29]This approach is suggested in the Notice at ¶ 60. It also has received a favorable recommendation by the Universal Service Joint Board in its recently-issued Recommended Decision. See Federal-State Joint Board on Universal Service (*Recommended Decision*), CC Docket No. 96-45, FCC 96J-3, released November 8, 1996, at ¶¶ 775-776 (Recommended Decision").

signals to potential users, it is administratively simple, it is efficient, and it affords discretion to IXCs to determine how to recover those costs from those end users who purchase their services.

Unlike other measures upon which a "bulk billed" charge could be based, including, for example, such usage-based factors as revenues or minutes of use, or capacity measures such as numbers of ILEC trunks or ports, a per-PSL charge correctly correlates with the number of end users served by each IXC. In other words, a per-PSL charge would correlate with the number of end user loops which access the interexchange services of each IXC.

In the Notice, the Commission raises the issue of "dial around." Specifically, the Commission asks whether a per-PSL charge would create incentives to "dial around" presubscribed IXCs (*e.g.*, by using 10XXX or 1-800 dialing codes), or even, not to presubscribe to any IXC.[30] In LCI's view, concerns about dial-around incentives do not detract from the wisdom of a per-PSL NTS cost recovery requirement. LCI believes that this phenomenon, if it were to occur at all, would be insignificant.

Presubscription has played the primary role in the development of interexchange competition. The obligation of ILECs to enable end users to presubscribe to the interexchange carriers of their choice is the cornerstone of the equal access provisions of the Modification of Final Judgment,[31] and the GTE Consent Decree.[32] In those proceedings, The Court and the

[30]Notice, *supra* at ¶ 60.

[31]United States v. American Telephone and Telegraph Company, 552 F. Supp. 131 (D.D.C. 1982), *aff'd. sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

Commission recognized correctly that interexchange telecommunications competition could not develop unless and until customers had the ability to choose their preferred carriers which could be accessed without having to learn and dial various access codes or additional digits.[33] The Commission itself uses presubscribed lines as a leading indicator of relative IXC market shares,[34] and the 1996 Act extends the notion of presubscription to local markets by requiring all local exchange carriers to provide dialing parity to competing providers.[35]

Since the beginnings of equal access and presubscription in 1984, the focus of IXC marketing efforts has been the pursuit of presubscribed customers. On several occasions, the Commission has deemed it necessary to promulgate rules to regulate the presubscription process,[36] and to impose sanctions against carriers for improperly changing customers'

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[32]United States v. GTE Corporation, 603 F. Supp. 730 (D.D.C. 1984). In addition to the equal access obligations imposed upon the Bell Operating Companies (BOCs) and the GTE telephone operating companies by the two consent decrees, the Commission has promulgated equal access obligations, including presubscription, for other LECs. See MTS and WATS Market Structure, 100 FCC2d 861 (1995).

[33]In fact, the term "1+ dialing" which had no significance prior to 1984, has come to be synonymous with direct dial calling using consumers' presubscribed carriers.

[34]See, *e.g.*, "FCC Releases Report on Long Distance Market," No. 65348, released September 27, 1996.

[35]47 U.S.C. § 251(b)(3).

[36]See, *e.g.*, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd 9560 (1995), Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038 (1992).